

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROMEO COSCIA :
Plaintiff : CIVIL ACTION

v. : NO. 02-3655 (JRP)

SALVATORE CAPONE :
Defendant :

ORDER

AND NOW, this day of , 2003, it is
ORDERED that Plaintiff's Motion for Issuance of Letters Rogatory
is DENIED without prejudice to the filing of a Motion with proper
Letters Rogatory.

BY THE COURT:

U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROMEO COSCIA	:	
Plaintiff	:	CIVIL ACTION
v.	:	NO. 02-3655 (JRP)
SALVATORE CAPONE	:	
Defendant	:	

RESPONSE OF DEFENDANT
SALVATORE CAPONE
TO PLAINTIFF'S MOTION FOR ISSUANCE OF LETTERS ROGATORY

Although defendant, Salvatore Capone, does not object to the issuance of Letters Rogatory for the specific documents requested, the Letters Rogatory submitted are improper in several respects. First, this Court is being asked to adopt a document which, in Paragraph 7, recites as fact the plaintiff's version of this case. In the first sub-paragraph, this Court would be affirming that Romeo Coscia loaned One Hundred Forty Thousand (\$140,000.00) Dollars to Salvatore Capone. That is a disputed fact which should not be adopted by this Court. In the fourth paragraph, this Court would be stating as fact plaintiff's assertion that the sum of One Hundred Forty Thousand (\$140,000.00) Dollars in question was deposited into Salvatore

Capone's Italian bank account. This Court should not adopt those assertions as findings.

In addition, the Letters are defective because they seek, in Paragraph 3, to have the executed request returned to plaintiff's counsel, when Article XIII of the Convention states:

"The documents establishing the execution of the Letter of Request shall be sent by the requested authority *to the requesting **authority*** by the same channel which was used by the later." [emphasis added]

CONCLUSION

For the foregoing reasons, the Motion for Letters Rogatory should be overruled without prejudice to the filing of a proper request.

VANGROSSI & RECCHUITI

BY: _____
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Attorneys for Salvatore Capone

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am, this day, serving a copy of the foregoing Response of Defendant, Salvatore Capone, to Plaintiff's Motion for Issuance of Letters, by First Class Mail, postage prepaid, as follows:

Gary J. McCarthy, Esquire
John N. Salla, Esquire
Joseph M. Armstrong, Esquire
(Attorneys for Plaintiff)
EIZEN, FINEBURG & McCARTHY, P.C.
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BY: _____
FRANCIS RECCHUITI

DATE: June 19, 2003